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June 8, 2011

Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

JUN 08 2011

Part of
Public Record

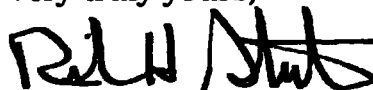
Re: Finance Docket No.35494, Mid-Michigan Railroad, Inc., d/b/a
Texas Northeastern Railroad—Trackage Rights Exemption—
Line of Texas Department of Transportation in Fannin County,
TX

Dear Ms. Brown:

On June 3, 2011, Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad filed a Verified Notice of Exemption in the above-referenced proceeding. Attached hereto is a Supplemental Verified Notice of Exemption and revised pages 1-3 of the proposed draft Trackage Rights Agreement. Please substitute the revised pages in the original filing and publish. In addition, a Supplemental Notice was filed this date in a related proceeding, F.D. No. 35493, *Texas Department of Transportation—Acquisition Exemption—Line of Union Pacific Railroad Company in Fannin County, TX*.

If you have any questions, please give me a call at 202-363-2011. Thank you for your consideration in this matter.

Very truly yours,



Richard H. Streeter
Attorney for Mid-Michigan Railroad, Inc.
d/b/a/Texas Northeastern Railroad and
Texas Department of Transportation

RHS:rs
Attachments

BEFORE THE SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20423

FINANCE DOCKET NO. 35494

MID-MICHIGAN RAILROAD, INC., d/b/a TEXAS NORTHEASTERN
RAILROAD, —TRACKAGE RIGHTS EXEMPTION—LINE OF
TEXAS DEPARTMENT OF TRANSPORTATION IN FANNIN COUNTY, TX

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)

Pursuant to 49 C.F.R. § 1180.2(d)(7), Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad ("TNER"), hereby files its Verified Notice of Exemption to acquire trackage rights to operate over 1.28 miles of railroad owned by the Texas Department of Transportation ("TxDOT"), which formerly were part of Union Pacific Railroad Company's ("UP") Bonham Subdivision from Mile Post 127.5 to Mile Post 128.78. The trackage rights are for the purpose of providing freight rail service to potential customers located in Bonham, Texas that were capable of being served by TNER pursuant to a lease of the subject line from Union Pacific Railroad Corporation ("UP"). As part of the transaction whereby TxDOT acquired ownership of the line, UP terminated a portion of the lease between milepost 127.5 and milepost 128.78 subject to TxDOT's grant of trackage rights to TNER over the same line of railroad. See F.D. No. 35493, *Texas Department of Transportation—Acquisition Exemption—Line of Union Pacific Railroad Company in Fannin County, TX*. The acquisition of these trackage rights will be based on a written agreement.

INFORMATION REQUIRED BY 49 C.F.R. § 1180.4(g)(1)(i):

Section 1180.6(a)(1)(i)-(iii)

TxDOT has agreed to grant local trackage rights to TNER at Bonham, Texas, between Mile Post 127.5 and Mile Post 128.78, located in Fannin County, Texas. TNER will operate its own trains with its own crews over TxDOT's line under the trackage right.

The carriers involved in this transaction and their business addresses are as follows:

**Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad
403 International Parkway, Suite 500
Richardson, Texas 75081**

**With Copy to: RailAmerica, Inc.
7411 Fullerton Ave., Suite 300
Jacksonville, Florida 32256
Attention: Commercial Counsel**

**Railroad Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
(512) 486-5230 phone
(512) 416-2348 fax**

Questions regarding this exemption should be sent to the following:

**Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
202-363-2011**

The Trackage Rights Agreement will be signed and will become effective following the effective date of this Exemption. Operations under this exemption will begin thereafter. The purpose of the trackage rights is to allow TNER to provide freight rail service to potential customers located between Mile Post

127.5 and Mile Post 128.78 and interchange of freight traffic with Fannin Rural Rail Transportation District ("FRRTD") or its operator.

Section 1180.6(a)(5):

The trackage involved in the trackage rights agreement is located in the State of Texas.

Section 1180.6(a)(6):

The required map is attached as Exhibit No. 1.

Section 11880.6(a)(7)(ii):

A copy of the trackage rights agreement covering this transaction is attached hereto as Exhibit No. 2.

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board.

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3), respectively.

A caption summary as required by 49 C.F.R. § 1180.4(g)(2)(i) is filed herewith.

Respectfully submitted,

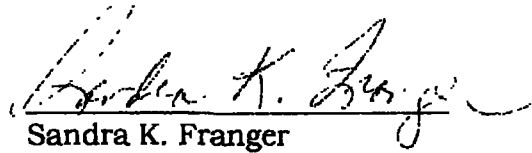


Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, D.C. 20016
(202) 363-2011

Dated: June 8, 2011

VERIFICATION

I, Sandra K. Franger, VP-Contracts, Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad, verify under penalty of perjury that the information contained in the foregoing Verified Notice of Exemption is true and correct to the best of my knowledge, information and belief. I further certify that I am qualified and authorized to file this Verified Notice of Exemption.


Sandra K. Franger

June 8, 2011

TRACKAGE RIGHTS AGREEMENT

BONHAM SUBDIVISION MILE POST 127.5 TO MILE POST 128.78, FANNIN COUNTY

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2011, by and between the Texas Department of Transportation, a Texas state agency ("TxDOT") and Mid-Michigan Railroad, Inc., (a Michigan corporation) doing business as Texas Northeastern Railroad ("TNER").

RECITALS

WHEREAS, TxDOT owns all of the rights, title, and interest in a line of railway between Mile Post 127.5 and Mile Post 128.78 in Fannin County, Texas, described in **Attachment 1** attached hereto and made a part hereof for all purposes (the "Rail Line"); the Rail Line is a portion of the Bonham Subdivision;

WHEREAS, TxDOT intends to lease the Rail Line to a rail operator for purposes of a tourist train;

WHEREAS, in the agreement dated _____, 2011, by which TxDOT purchased the Rail Line from Union Pacific Railroad Corporation ("Union Pacific"), Union Pacific represented that it will terminate the portion of an existing lease of rail facilities to TNER that concerns the Rail Line on the effective date of the Agreement. TxDOT in turn agreed to convey certain trackage rights to TNER as shown in this Agreement;

WHEREAS, Union Pacific previously leased the Rail Line to TNER, and TNER has acquired certain licenses related to the Rail Line. TNER has agreed to cancel its lease of the Rail Line from Union Pacific and assign the licenses to TxDOT in exchange for certain trackage rights as shown in this Agreement; and

WHEREAS, Texas Transportation Code Section 91.103 authorizes TxDOT to enter into agreements for the joint use of state-owned rail facilities.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

Article 1. Use of Rail Line

(a) Grant of Rights. Subject to the terms of the Agreement, TxDOT grants to TNER the exclusive right to use the Rail Line for purposes of freight rail

operations. TNER may set out, pick up, or serve any shipper located on the Rail Line. TNER may not store engines or rail cars on the Rail Line.

(b) Owner, Lessee of Rail Line. As owner of the Rail Line, TxDOT intends to lease the Rail Line to a rail operator (the "Lessee") for purposes of providing tourist train service. The Lessee will not be authorized to provide freight service over the Rail Line. Upon TxDOT entering into a separate lease agreement with a Lessee, Lessee shall be a third party beneficiary of this Agreement. As part of its exclusive direction and control of the Rail Line under this Agreement, TxDOT will give priority to TNER's freight train operations and will use its best efforts to ensure Lessee's tourist train operations do not unduly delay TNER's use of the line for freight operations.

(c) Third Party Rights. TNER shall not have the right to permit any third party to use the Rail Line. However, it may contract with a third party to provide freight service for and handle as its own equipment of any such third party.

(d) Access. TNER shall have the right to access the Rail Line at its west terminus at Mile Post 128.78.

(e) Improvement of Rail Line. As of the effective date of this Agreement the Rail Line is not in operational condition. It is anticipated that the Lessee will improve the portion of the Rail Line from milepost 127.5 to milepost 128.78 for purposes of operating a tourist train. TxDOT grants TNER the right to make improvements to some or all of the Rail Line as needed for freight operations subject to TxDOT's written approval and oversight of such improvements. TNER may begin rail operations under this Agreement upon the improvement of the Rail Line to the Federal Railroad Administration's Class I standards. At such time that TNER may undertake improvements to the portion of the line that is not used by the tourist train operation, TNER and TxDOT shall enter into a written agreement addressing the improvements to be made. As set out in Section 2.2 of General Conditions, TxDOT or its designee (a party other than TNER) will be responsible for ongoing maintenance associated with the improvement. TNER will continue to pay per mile trackage rights use fees as outlined in Article 2 of this agreement.

Article 2. Payments

TNER shall every October 1st make an annual payment to TxDOT for the use of the Rail Line during the period September 1st to August 31st immediately preceding the payment date. TNER shall pay the amount calculated of \$0.36 per Car Miles multiplied by Car Miles. TNER shall be responsible for the annual payment only if TNER utilizes the trackage rights in a particular year.

Car Miles are the sum of each car multiplied by the distance the car travelled on the Rail Line. The calculation shall include each car (loaded and

empty) and locomotive(s) operated with TNER's own crews and power over the Rail Line, and the miles of Rail Line used by such car or locomotive. It is agreed that the Rail Line is 1.28 miles one way, and that a round trip on the Rail Line is three miles. The calculation of Car Miles shall not be affected by the use of the Rail Line by other railroads, including any lessee of the Rail Line.

Light engines and caboose hops shall be considered one car for purposes of calculating Car Miles. Each locomotive in a train shall be counted as two cars. Each passenger car, freight car, and caboose shall be counted as one car. Each platform in an articulated unit of two or more platforms shall be counted as one car. The following activities will not be counted: switch engines while performing yard service, switch movements on the Rail Line while setting out and picking up cars at intermediate stations, business cars, hi-rail, and inspection cars, and equipment engaged in maintenance work.

The rate of \$0.36 per Car Mile shall be adjusted during the term of the Agreement as described in this paragraph. Beginning September 1, 2011, and each year thereafter, the rates shall be adjusted based on the relationship of the Association of American Railroads (or successor organization) Indexes of Railroad Material Prices and Wage Rates for Railroads of Class I, West District (material prices, wage rates, and supplements combined, excluding fuel) ("AAR Indexes") for the most recent year reported by AAR, compared to the AAR Indexes for the year 2010. The rates per Car Mile as increased or decreased shall comprise the Car Mile rate to be paid by TNER for use of the Rail Line.

TNER's annual payment shall be accompanied by a report of sufficient detail showing the number of cars, locomotives, and cabooses contained in each train that moved over the Rail Line during the twelve month period. TxDOT shall have the right to audit, at its sole expense, any and all records of TNER to verify the payment documentation.

Article 3. Common Carrier Obligation, Governmental Approvals

TxDOT grants and TNER acquires and assumes the common carrier obligation for rail freight service requested of it on the Rail Line. TxDOT shall retain the common carrier obligation. TNER, to the extent required by statute or regulation, shall prepare and file such documents as may be required to secure exemption from approval by the Surface Transportation Board ("STB") or other governmental authority of Lessee's acquisition of trackage rights and operations on the Rail Line. TNER shall have the right to seek approval to discontinue rail service. For all purposes relating to the ownership of the Rail Line, including all filings with or appearances before the STB or any other federal or state authority, TxDOT shall be shown as the owner of the Rail Line.

Article 4. Assignment of TNER's Previous Agreements